

§ 18.17

§ 18.17 Legal assistance.

The Office of Administrative Law Judges does not appoint representatives, refer parties to representatives, or provide legal assistance.

PARTIES AND REPRESENTATIVES

§ 18.20 Parties to a proceeding.

A party seeking original relief or action is designated a complainant, claimant or plaintiff, as appropriate. A party against whom relief or other action is sought is designated a respondent or defendant, as appropriate. When participating in a proceeding, the applicable Department of Labor's agency is a party or party-in-interest.

§ 18.21 Party appearance and participation.

(a) *In general.* A party may appear and participate in the proceeding in person or through a representative.

(b) *Waiver of participation.* By filing notice with the judge, a party may waive the right to participate in the hearing or the entire proceeding. When all parties waive the right to participate in the hearing, the judge may issue a decision and order based on the pleadings, evidence, and briefs.

(c) *Failure to appear.* When a party has not waived the right to participate in a hearing, conference or proceeding but fails to appear at a scheduled hearing or conference, the judge may, after notice and an opportunity to be heard, dismiss the proceeding or enter a decision and order without further proceedings if the party fails to establish good cause for its failure to appear.

§ 18.22 Representatives.

(a) *Notice of appearance.* When first making an appearance, each representative must file a notice of appearance that indicates on whose behalf the appearance is made and the proceeding name and docket number. Any attorney representative must include in the notice of appearance the license registration number(s) assigned to the attorney.

(b) *Categories of representation; admission standards—*(1) *Attorney representative.* Under these rules, "attorney" or "attorney representative" means an individual who has been admitted to

29 CFR Subtitle A (7-1-16 Edition)

the bar of the highest court of a State, Commonwealth, or Territory of the United States, or the District of Columbia.

(i) *Attorney in good standing.* An attorney who is in good standing in his or her licensing jurisdiction may represent a party or subpoenaed witness before the Office of Administrative Law Judges. The filing of the Notice of Appearance required in paragraph (a) of this section constitutes an attestation that:

(A) The attorney is a member of a bar in good standing of the highest court of a State, Commonwealth, or Territory of the United States, or the District of Columbia where the attorney has been licensed to practice law; and

(B) No disciplinary proceeding is pending against the attorney in any jurisdiction where the attorney is licensed to practice law.

(ii) *Attorney not in good standing.* An attorney who is not in good standing in his or her licensing jurisdiction may not represent a party or subpoenaed witness before the Office of Administrative Law Judges, unless he or she obtains the judge's approval. Such an attorney must file a written statement that establishes why the failure to maintain good standing is not disqualifying. The judge may deny approval for the appearance of such an attorney after providing notice and an opportunity to be heard.

(iii) *Disclosure of discipline.* An attorney representative must promptly disclose to the judge any action suspending, enjoining, restraining, disbarring, or otherwise currently restricting the attorney in the practice of law in any jurisdiction where the attorney is licensed to practice law.

(2) *Non-attorney representative.* An individual who is not an attorney as defined by paragraph (b)(1) of this section may represent a party or subpoenaed witness upon the judge's approval. The individual must file a written request to serve as a non-attorney representative that sets forth the name of the party or subpoenaed witness represented and certifies that the party or subpoenaed witness desires the representation. The judge may require that the representative establish that

he or she is subject to the laws of the United States and possesses communication skills, knowledge, character, thoroughness and preparation reasonably necessary to render appropriate assistance. The judge may inquire as to the qualification or ability of a non-attorney representative to render assistance at any time. The judge may deny the request to serve as non-attorney representative after providing the party or subpoenaed witness with notice and an opportunity to be heard.

(c) *Duties.* A representative must be diligent, prompt, and forthright when dealing with parties, representatives and the judge, and act in a manner that furthers the efficient, fair and orderly conduct of the proceeding. An attorney representative must adhere to the applicable rules of conduct for the jurisdiction(s) in which the attorney is admitted to practice.

(d) *Prohibited actions.* A representative must not:

(1) Threaten, coerce, intimidate, deceive or knowingly mislead a party, representative, witness, potential witness, judge, or anyone participating in the proceeding regarding any matter related to the proceeding;

(2) Knowingly make or present false or misleading statements, assertions or representations about a material fact or law related to the proceeding;

(3) Unreasonably delay, or cause to be delayed without good cause, any proceeding; or

(4) Engage in any other action or behavior prejudicial to the fair and orderly conduct of the proceeding.

(e) *Withdrawal of appearance.* A representative who desires to withdraw after filing a notice of appearance or a party desiring to withdraw the appearance of a representative must file a motion with the judge. The motion must state that notice of the withdrawal has been given to the party, client or representative. The judge may deny a representative's motion to withdraw when necessary to avoid undue delay or prejudice to the rights of a party.

§ 18.23 Disqualification of representatives.

(a) *Disqualification.*—(1) *Grounds for disqualification.* Representatives quali-

fied under § 18.22 may be disqualified for:

(i) Suspension of a license to practice law or disbarment from the practice of law by any court or agency of the United States, highest court of a State, Commonwealth, or Territory of the United States, or the District of Columbia;

(ii) Disbarment from the practice of law on consent or resignation from the bar of a court or agency while an investigation into an allegation of misconduct is pending; or

(iii) Committing an act, omission, or contumacious conduct that violates these rules, an applicable statute, an applicable regulation, or the judge's order(s).

(2) *Disqualification procedure.* The Chief Judge must provide notice and an opportunity to be heard as to why the representative should not be disqualified from practice before the Office of Administrative Law Judges. The notice will include a copy of the document that provides the grounds for the disqualification. Unless otherwise directed, any response must be filed within 21 days of service of the notice. The Chief Judge's determination must be based on the reliable, probative and substantial evidence of record, including the notice and response.

(b) *Notification of disqualification action.* When an attorney representative is disqualified, the Chief Judge will notify the jurisdiction(s) in which the attorney is licensed to practice and the National Lawyer Regulatory Data Bank maintained by the American Bar Association Standing Committee on Professional Discipline, by providing a copy of the decision and order.

(c) *Application for reinstatement.* A representative disqualified under this section may be reinstated by the Chief Judge upon application. At the discretion of the Chief Judge, consideration of an application for reinstatement may be limited to written submissions or may be referred for further proceedings before the Chief Judge.

§ 18.24 Briefs from amicus curiae.

The United States or an officer or agency thereof, or a State, Territory,